

Adoption Amendment Act 2008 No 103

[2008-103]



New South Wales

Status Information

Currency of version

Repealed version for 17 July 2009 to 31 December 2009 (accessed 18 July 2024 at 6:43)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Repeal**

The Act was repealed by sec 4 (1) of this Act with effect from 2.1.2010.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Adoption Amendment Act 2008 No 103



New South Wales

An Act to amend the *Adoption Act 2000* to make further provision with respect to the adoption of children and access to adoption information.

1 Name of Act

This Act is the *Adoption Amendment Act 2008*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of *Adoption Act 2000 No 75*

The *Adoption Act 2000* is amended as set out in Schedule 1.

4 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

[1]-[21] (Repealed)

[22] Section 133A

Insert after section 133:

133A Definition of “presumptive father”

In this Chapter:

presumptive father of an adopted person means a man who claims to be the birth parent of the adopted person and who:

- (a) is shown on the adopted person's original birth certificate as the adopted person's father, or
- (b) is a person whom the Director-General, Registrar or other information source is entitled to presume, under any law (including a law of another State, the Commonwealth or of a country outside Australia), to be the adopted person's father.

[23] Chapter 8, Part 2, Division 1

Insert after the heading to Part 2 of Chapter 8:

Division 1 Access entitlements (adoptions after 2008 changes)

133B Application of Division

This Division applies in respect of an adoption given effect to by an adoption order made on or after the commencement of this Division as a consequence of an application for an adoption order made on or after the commencement of this Division.

Note—

Changes to access entitlements were made by the [Adoption Amendment Act 2008](#) (which inserted this Division into this Act). For access entitlements in relation to adoptions before those changes, see Division 2.

133C Adopted person's rights

- (1) An adopted person is entitled to receive (subject to this Act):
 - (a) the person's original birth certificate, and
 - (b) his or her adopted person's birth record, and
 - (c) any prescribed information relating to the adopted person held by an information source (including prescribed information relating to the adopted person's birth parents, siblings and adopted brothers and sisters).
- (2) Despite subsection (1) (a), an intercountry adopted person is entitled to receive his or her original birth certificate only if such a certificate is held by an information source.
- (3) An adopted person who is less than 18 years of age is not entitled to receive his or her original birth certificate or adopted person's birth record, or prescribed information, except with the consent of:
 - (a) his or her surviving adoptive parents, or

- (b) the Director-General if there are no surviving adoptive parents or if they cannot be found or if there is, in the opinion of the Director-General, any other sufficient reason to dispense with their consent.

133D Adoptive parent's rights

- (1) An adoptive parent of an adopted person is entitled to receive (subject to this Act):
 - (a) the adopted person's original birth certificate, and
 - (b) the adopted person's birth record, and
 - (c) any prescribed information relating to the adopted person held by an information source.
- (2) Despite subsection (1) (a), the adoptive parents of an intercountry adopted person are entitled to receive the adopted person's original birth certificate only if such a certificate is held by an information source.

133E Birth parent's rights

- (1) A birth parent of an adopted person is entitled to receive (subject to this Act):
 - (a) the amended birth certificate of the adopted person if a record of the adoption of the person is registered under the *Births, Deaths and Marriages Registration Act 1995*, and
 - (b) the adopted person's birth record, and
 - (c) any prescribed information relating to the adopted person or adoptive parents held by an information source.
- (2) A birth parent of an adopted person who is less than 18 years of age is not entitled to receive any adoption information held by an information source unless the birth parent produces to the information source an authority authorising the information source to supply the adoption information issued by the Director-General.
- (3) The Director-General may issue, or refuse to issue, an authority to supply adoption information to the birth parent of an adopted person who is less than 18 years of age.
- (4) The Director-General may refuse to issue the authority only if, in the opinion of the Director-General, it would pose a risk to the safety, welfare or well-being of the adopted child or adoptive parents.
- (5) The Director-General is required to comply with any guidelines prescribed by the

regulations in determining whether the supply of information poses a risk to the safety, welfare or well-being of an adopted child or adoptive parents.

- (6) The Director-General may issue an authority to supply adoption information under this section subject to conditions.
- (7) An information source must not supply any adoption information that is the subject of such an authority in contravention of any such conditions imposed by the Director-General.
- (8) In this section, a reference to a birth parent of an adopted person includes a reference to a presumptive father of an adopted person.

133F Discretion to supply other information to birth parents

- (1) A designated person may supply a birth parent with prescribed information held by an information source about an adopted person who is less than 18 years of age without production of the amended birth certificate of the adopted person or authority to supply the adoption information if, in the opinion of the designated person, the information could not be used to identify the adopted person or his or her adoptive parents.
- (2) A birth parent of an adopted person may request the Director-General or a principal officer to take such action as is reasonable in the circumstances to ascertain from the adopted person's adoptive parents information of a kind prescribed by the regulations as to the current physical and emotional well-being of the adopted person.
- (3) A birth parent of an adopted person is entitled to receive from the Director-General (or from an information source authorised to supply the information) any information obtained in response to a request made under this section:
 - (a) that the Director-General considers does not identify, or could not be used to identify, the adoptive parents, and
 - (b) if, in the opinion of the Director-General, it would promote the welfare and best interests of any of the parties concerned.
- (4) In this section, a reference to a birth parent of an adopted person includes a reference to a presumptive father of an adopted person.

133G Non-adopted sibling's rights

- (1) A non-adopted sibling of an adopted person is entitled to receive (subject to this Act) any prescribed information relating to the adopted person.
- (2) A non-adopted sibling who is less than 18 years of age is not entitled to receive any prescribed information relating to an adopted person except with the

consent of:

- (a) the surviving parents of the non-adopted sibling, or
 - (b) the Director-General, if there are no surviving parents or if they cannot be found or if there is, in the opinion of the Director-General, any other sufficient reason to dispense with their consent.
- (3) A non-adopted sibling of an adopted person who is less than 18 years of age is not entitled to receive any prescribed information held by an information source relating to the adopted person unless the non-adopted sibling produces to the information source an authority authorising the information source to supply the prescribed information issued by the Director-General.
- (4) The Director-General may issue, or refuse to issue, an authority to supply adoption information to a non-adopted sibling of an adopted person who is less than 18 years of age.
- (5) The Director-General may refuse to issue the authority only if, in the opinion of the Director-General, it would pose a risk to the safety, welfare or well-being of the adopted child or adoptive parents.
- (6) The Director-General is required to comply with any guidelines prescribed by the regulations in determining whether the supply of information poses a risk to the safety, welfare or well-being of an adopted child or adoptive parents.
- (7) The Director-General may issue an authority to supply adoption information under this section subject to conditions.
- (8) An information source must not supply any adoption information that is the subject of such an authority in contravention of any such conditions imposed by the Director-General.
- (9) In this section, a ***non-adopted sibling*** of an adopted person means a sibling of an adopted person who is not himself or herself an adopted person.

[24] Chapter 8, Part 2, Division 2

Insert before section 134:

Division 2 Continuation of former access entitlements (adoptions before 2008 changes)

133H Application of Division

This Division does not apply to adoptions to which Division 1 applies.

[25] Section 136 Birth parent's rights

Omit section 136 (2).

[26] Section 136 (7)

Insert after section 136 (6) (before the note):

- (7) In this section, a reference to a birth parent of an adopted person includes a reference to a presumptive father of an adopted person.

[27] Section 136A

Insert after section 136:

136A Discretion to withhold supply or to supply subject to conditions (cf AI Act s 12A)

- (1) The following persons may request the Director-General to act under this section:
 - (a) an adopted person who is 18 or more years old,
 - (b) a birth parent,
 - (c) an adoptive parent of a person who is less than 18 years of age,
 - (d) an adoptive parent of a person who is 18 or more years of age and who has consented to the request being made.
- (2) The Director-General may, at the request of a person referred to in subsection (1):
 - (a) refuse to issue an authority authorising an information source to supply adoption information to which an entitlement arises under this Division, or
 - (b) supply such information subject to conditions specified in writing by the Director-General.
- (3) The Director-General may refuse to issue an authority to supply adoption information under this section only if, in the opinion of the Director-General, exceptional circumstances exist that make it necessary to do so to prevent serious harm to a party concerned.
- (4) Conditions that may be imposed by the Director-General under this section include conditions requiring the person entitled to the adoption information to undergo counselling by a person specified by the Director-General before the adoption information is supplied.

- (5) The Director-General must deal with a request under this section in accordance with any guidelines prescribed by the regulations.
- (6) An information source must not supply any adoption information that is the subject of an authority to supply adoption information imposing conditions on its supply unless the conditions are complied with.
- (7) The Director-General cannot delegate his or her functions under this section to any person other than an officer of the Department.

[28] Chapter 8, Part 2, Division 3, heading

Insert before section 137:

Division 3 **Miscellaneous**

[29] Section 137 Access to adoption information by relatives and others after death of adopted person or birth parent

Insert after section 137 (5):

- (5A) This section does not limit the entitlements of a non-adopted sibling of an adopted person under Division 1.

[30] Section 140 Discretion to supply adoption information

Omit section 140 (3). Insert instead:

- (3) The Director-General may supply (or authorise an information source to supply) adoption information or other information to any person who is not entitled under this Part to receive adoption information or other information under this Part if, in the opinion of the Director-General, it is reasonable to do so.

[31] Section 141 Discretion to withhold supply (or authorise the withholding of supply) of information or to supply it subject to conditions

Omit the section.

[32]-[34] (Repealed)